FILE COPY

NOV 18 1967

FILED

DEC 11 1967

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 70

ALITALIA-LINEE AREE ITALIANE, S. p. A.,

Petitioner,

—v.—

JOHN LISI, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MOTION OF ARNOLD HOLTZMAN FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

STUART M. SPEISER
Counsel for Applicant
Arnold Holtzman
Office and P. O. Address
200 Park Avenue
New York, New York 10017

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 70

ALITALIA-LINEE AREE ITALIANE, S. p. A.,

Petitioner,

—v.—

JOHN LISI, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MOTION OF ARNOLD HOLTZMAN FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

ARNOLD HOLTZMAN respectfully moves this Court for leave to file a brief in this case as *amicus curiae*. The attorney for petitioner herein, George N. Tompkins, Jr., Esquire, of the firm of Condon & Forsyth, One Rockefeller Plaza, New York, New York 10020, has refused to consent to applicant's filing of such brief as *amicus curiae*. The attorney for respondents, Theodore E. Wolcott, Esquire, 36 West 44th Street, New York, New York 10036, has also refused to consent to the filing of such brief as *amicus curiae*. Accordingly, leave of this Court is sought under the terms of Rule 42 of this Court's Revised Rules.

The applicant, Arnold Holtzman, has an interest in this case in that he now has pending an action for damages in the Supreme Court of New York, County of Kings, entitled "ARNOLD HOLTZMAN, Plaintiff —v— BRITISH EUROPEAN AIRWAYS and DE HAVILLAND, Defendants," being Index No. 7840/1963 on the Docket of said Court, in which the question involved is the same as that presented for decision in the instant case, namely—are the limitation of liability provisions contained in Article 22(1) of the Warsaw Convention (49 Stat. 3000-3026), available to an air carrier of a passenger receiving bodily injuries on a flight in international transportation in light of the provisions of Article 3(2) of the Convention (49 Stat. 3015) precluding availability of various provisions of the Convention limiting liability where the carrier accepts a passenger without a passenger ticket having been delivered, where the purported ticket contains, on the front thereof in exceedingly small print, the message, "Each passenger should carefully examine this ticket, particularly the Conditions on page 4," and the "notice" to the passengers is located on page 4 of a ticket and baggage checks combined in the form of a small booklet and (to quote the two courts below), is contained in footnotes printed "in microscopic type" and "camouflaged in Lilliputian print in a thicket of 'Conditions of Contract'", and the "exculpatory statements . . . are virtually invisible . . . are ineffectively positioned, diminutively sized, and unemphasized by bold face type, contrasting color, or anything else," and "'are so artfully camouflaged that their presence is concealed'"? Applicant Holtzman states that the ticket "delivered" to him by British European Airways, on the international flight on which he sustained severe and permanent bodily injuries, is identical, as to its pertinent parts, printing, typography

and legibility, to the ticket delivered to the respondents in the instant case. In addition, there are many other cases, now pending in various state and federal courts, involving identical tickets "delivered" to passengers who were killed or suffered severe bodily injury in international flight air crashes or accidents, in which the Warsaw Convention is being attempted to be used as a defense, among them being the following captioned cases in which the plaintiffs are represented by applicant's counsel, Stuart M. Speiser: *Volney Righter, etc.* v. *American Air Lines, et al.*, Supreme Court, County of New York, Index No. 11487/64; *Reiger* v. *Pan American, et al.*, Supreme Court, County of New York, Index No. 13252/66; *Byzinski* v. *Eastern Air Lines, et al.*, Supreme Court, County of New York, Index No. 6747/65; *Rygaard* v. *Eastern Air Lines, et al.*, Supreme Court, County of New York, Index No. 9722/65; *Harrison* v. *Eastern Air Lines, et al.*, Supreme Court, County of New York, Index No. 9723/65; *Graham* v. *Eastern Air Lines, et al.*, Supreme Court, County of New York, Index No. 9718/65; *Zuckerman* v. *Eastern Air Lines, et al.*, Supreme Court, County of New York, Index No. 9721/65; *Sommers* v. *Eastern Air Lines, et al.*, Supreme Court, County of New York, Index No. 9720/65; *Boryk* v. *Aerolineas Argentina, et al.*, U. S. D. C., Southern District, New York, 62 Civil 3855; *Eck* v. *United Arab Airlines*, Supreme Court, County of New York, Index No. 7778/63; *Eck* v. *United Arab Airlines*, U. S. D. C., Southern District, New York, 64 Civil 3855; *Love* v. *Pakistan Air Lines*, U. S. D. C., Southern District, New York, 65 Civil 2369; *Massenburg* v. *Eastern Air Lines, et al.*, U. S. D. C., Eastern District, New York, 65 A. 640 and *Powell* v. *Eastern Air Lines, et al.*, U. S. D. C., Eastern District, New York, 66 A. 101.

Applicant Holtzman says that the international air carrier which he is suing, namely, British European Airways, is owned by the Government of the United Kingdom of Great Britain and Northern Ireland, which Government has already been granted leave by this Court, in its order of November 6, 1967, to file a brief herein as *amicus curiae*. Applicant Holtzman further states that he has attempted to present his views to this Court, by and through his present counsel, as to the invalidity of the purported "withdrawal" of the Government of the United States of its earlier denunciation of the Warsaw Convention, in the case of Arnold Holtzman, Petitioner, v. Dean Rusk, Secretary of State, Respondent, Case No. 1294 on the Docket of this Court for the October, 1965, Term; petition for writ of certiorari was denied May 16, 1966, reported in 384 U. S. 943, 16 L. ed. 2d 541, 86 Sup. Ct. 1466. Moreover, leave to file briefs as *amici curiae*, in support of the position of the Petitioner herein, has also been granted by this Court, in its order of November 6, 1967, to: the International Air Transport Association; Air Transport Association of America; and the Republic of Italy. Thus, the same insurance and economic interests already participating in the *Lisi* matter are militating against the applicant in his own litigation; and the defendant in applicant Holtzman's case will be heard by this Court, but not Holtzman, the plaintiff, unless this motion is granted by this Court. By way of contrast, within the knowledge of applicant and his attorneys, no one, other than the named respondents, is thus far supporting the position of respondents in this Court.

The brief of respondents herein in the United States Court of Appeals for the Second Circuit argues that because of the form, typography and illegibility of the purported "notice" in the tickets received by respondents, the

petitioner carrier did accept respondents without tickets having been delivered within the meaning of Article 3(2) of the Warsaw Convention. There are salient points, however, not only as to the original history, purpose and intent of the Warsaw Convention with respect particularly to the scope and intended purpose of Articles 3(2), 22(1), and related provisions of the Convention, but also as to the manner in which this purported Treaty should be construed and applied, that have not been covered therein; and applicant, desiring to present these points, has no reason to believe that presentation of and argument upon them will be expanded and be made complete for consideration by this Court—particularly in light of the fact that respondents' position in this Court will be opposed not only by the brief and argument of petitioner, but also by the briefs of the four *amici curiae* who were granted leave to file briefs, as aforesaid, by this Court.

The interests of the individual parties litigant in this case are not co-extensive in scope with the far-reaching implications of the questions and points at issue. If the points intended to be presented by applicant are approved by this Court, the decisions of the Courts below will be affirmed.

Respectfully submitted,

STUART M. SPEISER
Counsel for Applicant
Arnold Holtzman
Office and P. O. Address
200 Park Avenue
New York, New York 10017